

REMARKS

A. Rule 173(c) Statement of Status of Claims and Support for Claim Changes

The status of the claims following entry of the amendment above is: claims 1-9, 11, 12, 14, 19, 20, 22, 50-56, 59-64, 66-78 are pending, and claims 10, 13, 15-18, 21, 23-49, 57, 58, and 65 are canceled.

Claim 65 has been canceled by this paper, and claims 71-78 have been added by this paper.

Claims 5, 50, 55, 56, 59, 60, 61, 63, 64, and 66 have been amended by this paper. An explanation of the amendment to these claims and an explanation of the support for the same in the original patent is provided below. Also below is an explanation of the support for the new claims in the original patent.

1. Independent Claim 5

The language of claim 5 at the time of the March 18, 2008 Office Action is set forth below, with language added by this amendment shown as underlined and language deleted by this amendment shown as struck-through:

5. A cover and wastewater combination comprising:

wastewater that includes sewage and/or industrial waste;

at least two sealed panels positioned over the wastewater, each panel having a side characterized by an edge and a plurality of openings spaced apart from the edge, ~~the panels being removably linked together in overlapping relationship such that gas from the wastewater can flow from underneath portions of the panels, through gaps between adjacent panels, to a location above the panels; and~~

the openings in one of the panels being positioned above the openings in the other panel, and a fastener being disposed through at least two adjacent openings.

Support for the addition of the term “sealed” is found in the second sentence of the Abstract of the original patent, and at col. 1, lines 37-39 of the original patent. Support for the claim without the deleted language is found, for example, in original claim 1; FIGS. 1 and 2; and col. 1, line 18 – col. 2, line 23 of the original patent.

2. Independent Claim 50

The language of claim 50 at the time of the March 18, 2008 Office Action is set forth below, with language added by this amendment shown as underlined:

50. A cover and wastewater combination comprising:
 - wastewater that includes sewage and/or industrial waste; and
 - at least two sealed panels removably linked to each other, the panels being positioned over and in direct contact with the wastewater;
 - where each panel contains, but is not completely filled with, an insulation material.

Support for the addition of the term “sealed” is found in the second sentence of the Abstract of the original patent, and at col. 1, lines 37-39 of the original patent.

3. Independent Claim 55

The language of claim 55 at the time of the March 18, 2008 Office Action is set forth below, with language added by this amendment shown as underlined:

55. A cover and wastewater combination comprising:
 - wastewater that includes sewage and/or industrial waste;
 - at least two sealed panels removably linked together in overlapping relationship over the wastewater; and
 - means for removably linking the panels in overlapping relationship, the means comprising fasteners and openings defined in each of the panels;
 - where the openings in one of the panels are positioned above the openings in another of the panels to form pairs of openings of different panels, and one

of the fasteners is disposed through each pair of overlapping openings so as to removably link the overlapping panels.

Support for the addition of the term “sealed” is found in the second sentence of the Abstract of the original patent, and at col. 1, lines 37-39 of the original patent.

4. Independent Claim 56 and Dependent Claim 59

The language of claims 56 and 59 at the time of the March 18, 2008 Office Action is set forth below, with language added by this amendment shown as underlined and language deleted by this amendment shown as struck-through:

56. A cover ~~and wastewater combination~~ comprising:

~~wastewater that includes sewage and/or industrial waste;~~

a plurality of panels removably linked together positioned over the wastewater,
~~the panels being removably linked together to form a non gas tight cover system,~~ each panel comprising ~~a geomembrane high density polyethylene material;~~ and

~~insulation material sealed inside each panel; by a weld~~

where the insulation material inside a panel does not completely fill the panel.

59. The cover ~~and wastewater combination~~ of claim 56, where each panel includes multiple openings, the panels overlap, and the panels are removably linked together with fasteners.

Support for the preamble amendments to claim 56 and 59 is found, for example, in the Title and the second sentence of the Abstract of the original patent. Support for “a plurality of panels removably linked together, each panel comprising high density polyethylene material” is found, for example, in FIG. 1 and at col. 1, lines 39-41 of the original patent. Support for “insulation material sealed inside each panel” is found, for example, in the second sentence of the Abstract and at col. 1, lines 37-39 of the original patent. Support for “where the insulation material inside a panel does not completely fill the panel” is found, for example, in FIG. 1 of the original patent.

5. Independent Claim 60 and Dependent Claim 61

The language of claims 60 and 61 at the time of the March 18, 2008 Office Action is set forth below, with language added by this amendment shown as underlined and language deleted by this amendment shown as struck-through:

60. A cover comprising:

a plurality of panels configured for use over wastewater, the panels being removably linked together with fasteners disposed through overlapping openings of adjacent panel portions such when the cover is positioned over wastewater, gas from the wastewater can travel from below the cover to above the cover through gaps in the removably linked panels;
where each panel includes insulation material sealed inside comprising a material that contains, but is not completely filling completely with, a void in the panel insulation.

61. The cover of claim 60, where each panel comprises ~~the material~~ is geomembrane.

Support for specifying that the panels are removably linked “with fasteners disposed through overlapping openings of adjacent panel portions” is found, for example, in FIG. 1 and at col. 1, line 42 – col. 2, line 10 of the original patent. Support for specifying that each panel “includes insulation material sealed inside, but not completely filling, a void in the panel” is found, for example, in FIG. 1, in the second sentence of the Abstract, and at col. 1, lines 37-39 of the original patent. Support for specifying in dependent claim 61 that each panel comprises geomembrane is found at col. 1, lines 39-41 of the original patent.

6. Independent Claim 63 and Dependent Claims 64 and 66

The language of claims 63, 64, and 66 at the time of the March 18, 2008 Office Action is set forth below, with language added by this amendment shown as underlined and language deleted by this amendment shown as struck-through:

63. A method of manipulating a cover comprising:

linking at least two panels such that (a) the panels are adjacent to each other and (b) ~~gas can migrate through gaps between the panels, where each panel includes comprising insulation material that is sealed inside contains, but that does is not completely filled with, a void in the panel insulation;~~ and disposing the panels over wastewater that includes sewage and/or industrial waste.

64. The method of claim 63, where each panel comprises the material is geomembrane.

66. The method of claim 63, where the insulation insulating material is rectangular.

Support for specifying that each panel “includes insulation material that is sealed inside, but that does not completely fill, a void in the panel” is found, for example, in FIG. 1, in the second sentence of the Abstract, and at col. 1, lines 37-39 of the original patent. Support for specifying in dependent claim 64 that each panel comprises geomembrane is found at col. 1, lines 39-41 of the original patent. Support for changing “insulating material” to “insulation material” in dependent claim 66 is found, for example, in the second sentence of the Abstract and at col. 1, lines 37-39 of the original patent.

7. New Claims 71-78

Support for new claims 71-78 is set forth in the following table:

| New Claim | Example Support in Original Patent for the Amendment |
|---|---|
| 71. A method of covering wastewater, comprising: disposing at least two panels over wastewater that includes sewage and/or industrial waste, where the at least two panels are linked to each other and each contains, but is not completely filled with, insulation material. | Col. 1, lines 4-22; FIG. 2. Col. 1, lines 4-22; FIGS. 1 and 2; col. 1, lines 26-28; col. 1, lines 31-35; col. 1, lines 37-38; col. 2, lines 21-2; claim 1. |
| 72. The method of claim 71, where each panel comprises geomembrane. | Col. 1, lines 39-41. |
| 73. The method of claim 72, where, for | Second sentence of the Abstract and at col. 1, |

| New Claim | Example Support in Original Patent for the Amendment |
|--|---|
| each panel, the insulation material is sealed inside the geomembrane. | lines 37-39. |
| 74. The method of claim 71, where the insulation material is rectangular. | FIGS. 1 and 2; col. 1, lines 35-37. |
| 75. The method of claim 71, where each panel comprises openings, and the linking includes placing a fastener through at least one pair of adjacent openings. | FIG. 1; col. 1, line 42 – col. 2, line 10; claim 1. |
| 76. The method of claim 75, where the openings in each panel are adjacent to at least one edge of one side of the panel. | FIGS. 1 and 2; col. 2, lines 1-4; claim 1. |
| 77. The method of claim 75, where the linking includes orienting the panels in an overlapping relationship. | FIGS. 1 and 2; col. 2, lines 5-10; claim 1. |
| 78. The method of claim 77, further comprising: anchoring the linked panels over the wastewater. | FIG. 2; col. 2, lines 10-20; claim 1. |

B. New Supplemental Declarations Will Be Filed

Applicants agree to provide new supplemental declarations requested by the Office in order to comply with Rule 175(b)(1).

C. The Assignment Was Filed with the Filed Consent of All Assignees

The enclosed copy of the postcard filed on March 14, 2006 shows that an “Assignment” was filed with the both the 3.73(b) Statement and the Consent of Assignee (copies of both were submitted with the last response). The filed assignment which was included in the March 14, 2006 filing was recorded on March 17, 2006 at Reel/Frame 017681/0862. If necessary, Applicants can fax the Examiner a courtesy copy of the assignment.

D. Summary of Examiner Interview

Applicants representative, Mark Garrett, spoke with Examiner Canfield about the merits of the written description and new matter rejections with respect to claims 50-55 on May 21, 2008. Examiner Canfield considered Applicants' arguments that the "removably linked" language of these claims did have adequate written description support in the application that led to the original patent, and agreed that these rejections had been overcome. Examiner Canfield indicated that these claims may be obvious over the Walker patent, though this issue was not discussed in more detail.

E. All the Written Description and New Matter Rejections Are Overcome

Applicants have amended independent claims 5, 56, 60 and 63 to remove the language on which the Office based its written description and new matter rejections. Accordingly, these rejections have been overcome.

The Office agreed, as explained above, that the new matter and written descriptions rejections of claims 50-55 were overcome.

F. Claims 60-62 Are Patentable over Walker

Independent claim 60 has been amended to further distinguish Walker (US 4,590,714). A marked-up version of the claim follows:

60. A cover comprising:

a plurality of panels configured for use over wastewater, the panels being removably linked together with fasteners disposed through overlapping openings of adjacent panel portions such when the cover is positioned over wastewater, gas from the wastewater can travel from below the cover to above the cover through gaps in the removably linked panels;

where each panel includes insulation material sealed inside comprising a material that contains, but is not completely filling completely with, a void in the panel insulation.

Walker fails to teach or suggest insulation material that is “sealed inside” a void in his panel. Instead, Walker’s fibrous batt insulation layer is stitched to the two pieces of high density polyethylene material. *See* attached Morgan Decl. at paragraph 3. Furthermore, Walker’s tarp includes a vent on its top so that air can escape through the vent as the insulation is compressed for storage, and so that air can enter the tarp when the compressive force is removed and the insulation expands. Morgan Decl. at paragraph 4. Thus, Walker’s tarp is not sealed. Morgan Decl. at paragraph 5 (“the membranes [of Walker’s tarp] are stitched together and not sealed”). For this reason, the rejection of independent claim 60 and its dependent claims based on obviousness over Walker is overcome.

These claims are patentable over both Dearing and Wilson because any insulation material in the panels of these patents completely fills those panels. *See* March 14, 2006 Response at pg. 25 (first two full paragraphs).

G. The Remaining Pending Claims Are Patentable over Walker

The remaining pending claims have all been amended to ensure patentability over Walker. Claims 5, 50, and 55 all now recite that the claimed at least two panels are “sealed.” For the same reasons given above, and as set forth in the enclosed Morgan Declaration, Walker fails to disclose or suggest sealed panels. Furthermore, Walker fails to disclose or suggest placing his panels over wastewater. Mr. Morgan explains why:

5. Walker’s tarp would take on wastewater if it were placed over wastewater because the membranes are stitched together and not sealed. Once wastewater got through the stitching gaps, it would get into and begin to fill the open spaces of the insulation. As a result, the tarp would no longer be as effective an insulator. It would also become heavier and more difficult to move. These are reasons why people in the business of covering wastewater do not and would not use Walker’s tarps to cover wastewater.

Morgan Decl. at paragraph 5. For these reasons, claims 5, 50, 55, and the dependent claims of claims 5 and 50 are patentable over Walker. Furthermore, claim 5 and its dependents are patentable over Dearing and Wilson at least because neither reference teaches or suggests “the openings in one of the panels being positioned above the openings in the other panel”; claim 50 and its dependents are patentable over Dearing and Wilson at least for the same reason as claim 60; and claim 55 is patentable over Dearing and Wilson at least because neither reference teaches or suggests the claimed “overlapping” and “the openings in one of the panels are positioned above the openings in another of the panels”.

Claim 56 and its dependent claim are patentable over Walker because Walker fails to teach or suggest “insulation material sealed inside each panel,” and these claims are patentable over Dearing and Wilson at least for the same reason as claim 60.

Claim 63 and its dependent claims are patentable over Walker because Walker fails to teach or suggest “where each panels includes insulation material that is sealed inside . . . a void in the panel,” and because Walker fails to teach or suggest placing his tarps over wastewater. These claims are also patentable over Dearing and Wilson at least for the same reason as claim 60.

New claim 71 and its dependent claims are patentable over Walker because Walker fails to teach or suggest “disposing at least two panels over wastewater that includes sewage and/or industrial waste.” Again, Mr. Morgan explains why:

5. Walker’s tarp would take on wastewater if it were placed over wastewater because the membranes are stitched together and not sealed. Once wastewater got through the stitching gaps, it would get into and begin to fill the open spaces of the insulation. As a result, the tarp would no longer be as effective an insulator. It would also become heavier and more difficult to move. These are reasons why people in the business of covering wastewater do not and would not use Walker’s tarps to cover wastewater.

Morgan Decl. at paragraph 5. These claims are patentable over Dearing and Wilson at least for the same reason as claim 60.

H. Conclusion

Applicants respectfully submit that claims 1-9, 11, 12, 14, 19, 20, 22, 50-56, 59-64, 66-78 are in condition for allowance. Should the Examiner have any questions, comments, or suggestions relating to this application, he is invited to contact the undersigned attorney at (512) 536-3031 to expedite the resolution of any remaining issues.

Date: August 18, 2008

Respectfully submitted,

/Mark T. Garrett/

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Please indicate receipt of the below-identified paper:

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| <input type="checkbox"/> Response to Office Action Dated: | <input type="checkbox"/> Final Rejection | | |
| <input checked="" type="checkbox"/> Other: Trans. Form; Pet. to Revive; Response to Apr '05 OA, incg pet. for 3-month extension of time and Deposit Acct authorization; 37 C.F.R. 1.132 Decl. of Michael A. Morgan; State. Under 37 CFR 3.73(b); Rev. of POA with New POA and Change of Corr. Add.; Consent of Assignee; Assignment Assignment Coversheet; Sump. Reissue Decl. Under 37 C.F.R. 1.175(b) and Original Decl. of Added Inventor | | | |
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IDENTIFICATION OF APPLICATION

| | |
|---------------|---|
| Serial No.: | 08/828,330 |
| Title: | Insulated Removable Pond Cover |
| Applicant: | William D. Morgan |
| Client: | Industrial Environmental Concepts, Inc. |
| Mailed: | March 14, 2006 |
| Attorney: | MTG |
| F&J File No.: | IAEC:007USR1 |
| Due Date: | |